IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 1363 of 1997
Date of Decision: 27.09.2006

Mrs. Radha Chhabra and & Ors. ...Appellants

Vs.

Raj Kumar & Ors. ...Respondents

CORAM Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr.Mrigank Sharma, Advocate,
for the appellants.

Mr. Ravinder Arora, Advocate,
for the Insurance Company.

Vinod K.Sharma, J. (Oral)

This order shall dispose of FAO Nos. 1363, 1367 and 1368 of 1997 as the same have arisen out of same accident and common judgment.

Present appeals have been filed against the order dated 12.5.1997 passed by the learned Motor accident Claims Tribunal, Sonepat (for short the Tribunal) vide which the claim petitions filed by the claimants have been dismissed.

The facts are taken from FAO No. 1363 of 1997. The claimant/ appellants filed claim petition under Section 166/140 of the Motor Vehicles Act, 1988 (for short the Act) on the allegations that on 25.9.1993 at about

11 P.M. deceased Vinod Chhabra along with his cousin brother Kamal Pruthi was going to Panipat in Maruti Car No.DNH-5091 at a very slow speed towards their own side. Vinod Chhabra was sitting on the front seat of the car and his cousin brother was driving the car at a slow speed. When the car reached near Satnam Rice Mills G.T.Road, Murthal at about 12 P.M. (night) a truck No.HR-06/9947 loaded with bags was standing on the wrong side of the G.T. Road near Satnam Rice Mills, Murthal. The driver of the truck had not put any indication or light at the end of the truck. The driver of the truck had neither set any fire on the road nor the indication was functioning. The driver of the truck had parked his truck on the wrong side negligently. When the car of the complainant reached at the parked place it dashed at the parked truck in which Vinod Chhabra died and Kamal Pruthi was badly injured and car was also totally smashed. It was claimed that the alleged accident had taken place due to wrong and negligent parking of Truck No. HR-06-9947. The claimants claimed compensation to the tune of Rs.8 lacs.

On the other hand Kamal Pruthi claimed a sum of Rs.5 lacs for the injuries suffered by him in addition to a sum of Rs.70,000/- was claimed as damages on account of damage caused to the car.

The claim petitions were contested by the respondents. Respondent No.1 filed written statement contending that he was not negligent in parking the truck as alleged. It was also the case of respondents that respondent No.1 had sold Truck No.06-9947 on 20.9.1993 to Rajesh Kumar and received full and final payment of the said vehicle so the petitions were bad for non-joinder of necessary parties.

Respondents No.2 and 4 filed joint written statement

contending that respondent No.4 had purchased the said truck on 7.11.1993 which was transferred on 8.11.1993 as such respondent No.4 has got no concern with the claim petitions. It was also claimed that the truck in question was insured with respondent No.3, Insurance Company. It was further the case of respondent No.2 driver of the truck that he had parked the truck on correct side of the road and indicators were on. Kamal Pruthi was said to be driving his car rashly and negligently and his car dashed with the truck. He further contended that he was holding a valid driving licence on the date of the accident. It was further claimed that he was not liable to indemnify the claim. In case it was found that he was negligent even then the Insurance Company Respondent No.3 was liable to indemnify the claim because the truck was insured with it.

On the pleadings of the parties the following issues were framed:-

> "1. Whether the accident in question took place due to the negligence and wrong parking of Truck No.HR-06/9947, by its driver Raj Singh, respondent No.2, which truck was owned by respondents No.1 and 4, namely Raj Kumar and Rajesh, and which was insured with respondent No.3 National Insurance Company Limited, Panipat at the time of accident in question? OPP
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> 2. Whether Vinod Chhabra, since deceased (in the main case) and Kamal Pruthi in the connected case suffered injuries and whether Car No.DNH-5091 got damaged in the accident in question and if so, to what extent; and whether Vinod Chhabra succumbed to those injuries and what was the nature

of injuries, suffered by Kamal Pruthi? OPP

3. Whether the present claimants in the main case are the legal heirs/ legal representatives/ dependents of Vinod Chhabra deceased,if so,whether they alone are legal heirs/ legal representatives/ dependents of the deceased? OPP

4. Whether respondent No.2 Raj Singh was holding a valid driving licence at the time of alleged accident in question? OPR-2

5. To what amount of compensation, if any, are the claimants in the main case entitled to receive due to death of Vinod Chhabra in the accident in question, if so, from whom? OPP

6. To what amount of compensation, if any, is the claimant Kamal Pruthi entitled to receive due to the injuries, suffered by him in the accident in question and for the damage of his aforesaid car in the accident in question, If so, from whom? OPP

7. Relief."

Learned Tribunal on Issue No.1 came to the conclusion that the accident had occurred due to negligence on the part of Kamal Pruthi who was one of the claimants. On issue No.2 it was held that Vinod Chhabra had died in the accident and Kamal Pruthi had sustained injuries. On issue No.3 claimants were held to be the legal representatives of the deceased Vinod Chhabra, whereas on issue No.4 it was held that the driver of the truck was holding a valid driving licence. However, on issue Nos.5 and 6 no findings were recorded in view of the findings recorded on issue No.1 holding that

the accident had occurred due to negligence of Kamal Pruthi. Accordingly the claim petitions were dismissed.

Mr.Mrigank Sharma, learned counsel for the appellants challenged the findings on issue No.1 mainly on the ground that in his statement P.W.4 Kamal Pruthi has stated that the truck was parked in the middle of the road and as lights were coming from front side, it was only possible to spot the truck from the distance of 10/15 feet. He also stated that he was driving the car which struck against the truck No.HR/06-9947. From this, the contention of the learned counsel for the appellants is that in view of the fact that no evidence has been led by the respondents to controvert the statement of PW 4 Kamal Pruthi the learned Tribunal was not right in coming to the conclusion that the accident had occurred due to rash and negligent driving of Kamal Pruthi. The contention of the learned counsel for the appellants is that in view of this unchallenged statement it has to be presumed that the truck was parked in the centre of the road and therefore, negligence on the part of the driver of the truck was proved. The learned counsel for the appellants in support of his contention relied upon the judgments in **Saudagar Singh Chhajusing and others Vs. Jashodaben and another 1986 A.C.J. 1079 and Pushpinder Kaur Sekhon Vs. Corporal Sharma and another 1986 A.C.J. 591.**

I have considered the arguments raised by the learned counsel for the appellants and find no force in the same. The appellant Kamal Pruthi is one of the claimants and did not choose to lead any other evidence in support of his contention which was primarily contrary to the pleadings in the petition wherein the stand of the appellants was that the truck was standing on the wrong side whereas in the evidence led a different stand

was taken that the truck was parked in the middle of the road. This statement has to be further seen keeping in view the fact that in the present case no First Information Report was registered and only Daily Diary Report was got recorded which prima facie shows that truck driver was not at all at fault. Even otherwise, from the statement of PW 4 Kamal Pruthi it would be seen that he had himself admitted that he noticed the truck from 10/15 feet and in spite of that he dashed his car against the truck, therefore, it cannot be said that he was driving the vehicle at a slow speed as alleged by him.

Be that as it may, in view of the facts and circumstances of the judgment in the case of **Bhagwan Dass and another Vs. Kulwant Singh and others 1982 A.C.J. 355** relied upon by the Tribunal were fully applicable to the facts of the present case. Learned Tribunal, therefore, correctly applied the law laid down in the case of **Bhagwan Dass's case (supra)** as well as **Pepsu Road Transport Corporation Vs. Gurdial Singh and others 1989 (2) P.L.R. 467** to decide issue No.1 against the appellants. There is no error in the findings recorded by the learned Tribunal which may call for interference by this Court.

Accordingly, all the three appeals are dismissed.

(Vinod K.Sharma)
Judge

27.09.2006
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